

Rule 27. Stays of sentence pending appeal from courts of record.

(a) Staying sentence terms other than incarceration.

(a)(1) A sentence of death is stayed if an appeal or a petition for other relief is pending. The defendant shall remain in the custody of the warden of the Utah State Prison until the appeal or petition for other relief is resolved.

(a)(2) When an appeal is taken by the prosecution, a stay of any order of judgment in favor of the defendant may be granted by the court upon good cause pending disposition of the appeal.

(a)(3) Upon the filing of a notice of appeal, and motion of the defendant, the court may stay any sentenced amount of fines, conditions of probation (other than incarceration) pending disposition of the appeal, upon notice to the prosecution and a hearing if requested by the prosecution.

(a)(4) A party dissatisfied with the trial court's ruling on such a motion may petition for relief in the court in which the appeal is pending.

(b) Staying sentence terms of incarceration. A defendant sentenced, or required as a term of probation, to serve a period of incarceration in jail or in prison, shall be detained, unless released by the court in conformity with this rule.

(b)(1) In general. Before a court may release a defendant after the filing of a notice of appeal, the court must:

(b)(1)(A) issue a certificate of probable cause; and

(b)(1)(B) determine by clear and convincing evidence that the defendant:

(b)(1)(B)(i) is not likely to flee; and

(b)(1)(B)(ii) does not pose a danger to the safety of any other person or the community if released under any conditions as set forth in subsection (c).

(b)(2) A defendant shall file a written motion in the trial court requesting a stay of the sentence term of incarceration.

(b)(2)(A) That motion shall be accompanied by a copy of the filed notice of appeal; a written application for a certificate of probable cause; and a memorandum of law. The memorandum shall identify the issues to be presented on appeal and support the defendant's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison. The memorandum shall also address why clear and convincing evidence exists that the defendant is not a flight risk and that the defendant does not pose a danger to any other person or the

community.

(b)(2)(B) A copy of the motion, the application for a certificate of probable cause and supporting memorandum shall be served on the prosecuting attorney. An opposing memorandum may be filed within ~~10~~ 14 days after receipt of the application, or within a shorter time as the court deems necessary. A hearing on the application shall be held within ~~10~~ 14 days after the court receives the opposing memorandum, or if no opposing memorandum is filed, within ~~15~~ 14 days after the application is filed with the court.

(b)(3) The court shall issue a certificate of probable cause if it finds that the appeal:

(b)(3)(A) is not being taken for the purpose of delay; and

(b)(3)(B) raises substantial issues of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.

(b)(4) If the court issues a certificate of probable cause it shall order the defendant released if it finds that clear and convincing evidence exists to demonstrate that the defendant is not a flight risk and that the defendant does not pose a danger to any other person or the community if released under any of the conditions set forth in subsection (c).

(b)(5) The court ordering release pending appeal under subsection (b)(4) shall order release on the least restrictive condition or combination of conditions set forth in subsection (c) that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community.

(b)(6) Review of trial court's order. A party dissatisfied with the relief granted or denied under this subsection may petition the court in which the appeal is pending for relief.

(b)(6)(A) If the petition is filed by the defendant, a copy of the petition, the affidavit and papers filed in support of the original motion shall be served on the Utah Attorney General if the case involves any felony charge, and on the prosecuting attorney if the case involves only misdemeanor charges.

(b)(6)(B) If the petition is filed by the prosecution, a copy of the petition and supporting papers shall be served on defense counsel, or the defendant if the defendant is not represented by counsel.

(c) If the court determines that the defendant may be released pending appeal, it may release the defendant on the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community, which conditions may include, without limitation, that the defendant:

(c)(1) is admitted to appropriate bail;

- (c)(2) not commit a federal, state or local crime during the period of release;
- (c)(3) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person will appear as required and will not pose a danger to the safety of any other person or the community;
- (c)(4) maintain employment, or if unemployed, actively seek employment;
- (c)(5) maintain or commence an educational program;
- (c)(6) abide by specified restrictions on personal associations, place of abode or travel;
- (c)(7) avoid all contact with the victim or victims of the crime(s), any witness or witnesses who testified against the defendant and any potential witnesses who might testify concerning the offenses if the appeal results in a reversal or an order for a new trial;
- (c)(8) report on a regular basis to a designated law enforcement agency, pretrial services agency or other agency;
- (c)(9) comply with a specified curfew;
- (c)(10) refrain from possessing a firearm, destructive device or other dangerous weapon;
- (c)(11) refrain from possessing or using alcohol, or any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner;
- (c)(12) undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol abuse or dependency;
- (c)(13) execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court may specify;
- (c)(14) return to custody for specified hours following release for employment, schooling or other limited purposes; and
- (c)(15) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of persons and property in the community.
- (d) The court may at any time for good cause shown amend the order granting release to impose additional or different conditions of release.